IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION No. 5736 of 2005

Between:

P.Hare Rama Prasad, S/o.Venkat Rao,
Manager, Cherukuwada Group temples, Cherukuwada Village, Penugonda Mandal, West Godavari District.

..... PETITIONER

AND

1. The Commissioner, Endowments Department, Tilak Road,
Boggulakunta, Hyderabad.
2. The Government of A.P. represented by its Principal Secretary to the Government, Revenue (Endowments-I) Dept., Secretariat, Hyderabad.
(R 2 is impleaded as per court order dated 24-3-2005 in
WPMP 8075 of 2005)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly in the nature of Mandamus:

a. To call for the records connected with through Rc.No.V2/60527/ 2004, dt.23/2/2005 issued by the respondent and declare the same to be without jurisdiction.

b. To declare Rule 6 of Office Holders and Servants Punishment Rules, 1987 issued through G.O.Ms.No.830, Revenue (Endowments-I) dated: 18.8.1989 as ultra vires of Sections

37, 38 and also the rule-making power under Section 153 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Acts, 1987 (Act No.30 of 1987) and pass such order or orders as this Honourable Court may deem fit and proper in the interests of Justice.

(Prayer is amended as per Court order dated: 24.3.2005 in WPMP No. 8538 of 2005.)

Counsel for the Petitioner: Mr. P.BALA KRISHNA MURTHY

Counsel for the Respondents: GP FOR ENDOWMENTS

The Court made the following :

ORAL ORDER:

(per Honourable Sri Devinder Gupta, the Chief Justice)

The order of suspension dated: 23.2.2005 passed by the Commissioner, Endowments Department, A.P., Hyderabad, purported to be in exercise of the powers conferred under sub-rule (1) (b) of Rule 8 of the CCA Rules, 1991 and in the capacity of disciplinary authority, placing the petitioner under suspension pending framing of the charges against him to prevent tampering of the records of the temple by the petitioner, is under challenge in this Writ Petition. In addition to challenging the order of suspension, petitioner has also tried to challenge the vires of Rule 6 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Punishment Rules, 1987 to be ultra vires the Act.

Learned counsel for the petitioner submits that the petitioner had been appointed as Junior Assistant in Peravalli Group temples on 10.9.1993 and was transferred to Cherukuwada Group temples on 4.9.2001 in the cadre of Manager and since then, he has been working there and discharging his functions as Executive Officer having been so authorized by the Commissioner of Endowments through his proceedings dated: 31.8.2000. Alleging mala fides, it is stated by the petitioner that he was put under suspension pending enquiry into the charges to be framed against him. Challenge to the order of suspension is on the ground that by virtue of the provisions of Section 35 read with Section 37 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as “the Act”), the power vests in the trustees to take disciplinary proceedings against him, and, even to put under suspension, the power vests with the trustees and not

with the Commissioner. Therefore, the order putting under suspension by the Commissioner is beyond his jurisdiction. Moreover, petitioner was put under suspension under Rule 8 of the CCA Rules, 1991, which cannot be invoked insofar as the petitioner is concerned, since, he is not a member of the service, which has been defined in Rule 5 of the said Rules, to be a member of State Civil Services or member of Subordinate Services. It is further alleged that, though the petitioner was asked to discharge the functions of the Executive Officer, but by mere asking to discharge the functions of Executive Officer, he will not become a civil servant, thereby, enabling the Commissioner to put him under suspension in exercise of the powers under Rule 8 of the CCA Rules.

No doubt, the petitioner was initially employed as Junior Assistant in Peravalli Group temples and he is governed in the matter of his appointment and for disciplinary purposes under Sections 35 and 37 of the Act, in which case, action has to be taken by the trustee. But, the entire difference has been made with the order passed by the Commissioner, Endowments Department, on 31.8.2001 in exercise of his powers under Section 29(5) (d) of the Act and the petitioner was to perform the functions and discharge the duties as if he was the Executive Officer of Group of temples. The petitioner was duly authorized to function as person-in-management and was asked to take charge of group of temples immediately. For the purpose of exercising the powers, performing the functions and discharging the duties of Executive Officer, the Commissioner Endowment further directed that petitioner shall be designated as person-in-management so long he functions as such and that he may be recalled at any time by the Commissioner in the interests of the institutions without assigning any reason. The order further states that the Person-in-Management should be held responsible for all omissions and commissions while functioning in respect of an institution or endowments as he should be held liable as per the provisions of the Endowments Act and the Rules as if he was an Executive Officer. Thus, by virtue of the order dated: 31.8.2001, which is the order relied upon by the petitioner for seeking his relief, he is to be treated as if he is an Executive Officer to be held responsible for all omissions and commissions by functioning as person-in-management of the group temples, and, for that reason, the petitioner will be deemed to be governed under Section 29(6) of the Act to be employee of the Government. Under Rule 7 of the CCA Rules, the subordinate services shall consist of the services specified in Schedule-II to these rules and include any other services that may be notified. The Andhra Pradesh Endowments Executive Officers

Subordinate Service is included in the Second Schedule, and, therefore, the Commissioner of Endowments has, rightly, in exercise of his powers under sub-rule 1(b) of Rule 8, put the petitioner under suspension.

The Commissioner has not exercised his power under Rule 6 of the Andhra Pradesh Hindu Religious Institutions and Endowments Office Holders and Servants Punishment Rules, 1987. Therefore, we need not go into the validity of the said rule since that power has not been exercised by the Commissioner. Independent power has been exercised by the Commissioner, since it was the Commissioner who authorized the petitioner to exercise the powers, perform the functions and discharge the duties of an Executive Officer with power to recall and take action against such individual discharging functions as Executive Officer. As such, we do not find any force in the Writ Petition.

The learned counsel for the petitioner, at this stage, states that enquiry might continue against the petitioner endlessly inasmuch as the initiation of proceedings has political turn. Therefore, he prays that direction be issued to complete the enquiry in a time-bound frame. We have questioned the learned counsel for the respondents, who states that six months period would be sufficient to complete the enquiry. Accordingly, while dismissing the Writ Petition, we direct that the disciplinary proceedings initiated against the petitioner shall be completed in all respects within a period of six months from the date of the receipt of writ order from the Court.

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DEVINDER GUPTA, C.J.

31.3.2005.

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B.SESHASAYANA REDDY, J.

VR.

To

1. The Commissioner, Endowments Department, Tilak Road,
Boggulakunta, Hyderabad.
2. The Principal Secretary to Government of A.P., Revenue (Endowments-I) Dept.,
Secretariat, Hyderabad.
3. Two CCs to Government Pleader for Endowments, High Court Buildings,
Hyderabad (OUT).

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